

**REMARKS**

Claims 1-30 are pending in this application, of which claims 1-9 and 16-30 have been withdrawn from consideration by the Examiner in light of Applicant's election of Species III for prosecution on the merits.

Applicant has amended claims 10, 14, and 15. The changes to these claims made herein do not introduce any new matter.

**Rejection Under 35 U.S.C. § 102**

Applicant respectfully requests reconsideration of the rejection of claims 10-15 under 35 U.S.C. § 102(b) as being unpatentable over *Nitta* (JP 2001-186297). As will be explained in more detail below, the *Nitta* reference does not disclose each and every feature of the subject matter defined in independent claims 10, 14, and 15, as amended herein.

In support of the anticipation rejection, the Examiner asserts that the automatic selection mode and the manual selection mode shown in the *Nitta* reference correspond to the claimed shooting condition and the claimed image processing control information, respectively. Applicant respectfully traverses the Examiner's characterization of the *Nitta* reference relative to the claimed subject matter.

The automatic selection mode and the manual selection mode shown in the *Nitta* reference are selected by the user. This is significantly different from the claimed subject matter in which the shooting condition is used to carry out image processing in the case of failed retrieval of the image processing control information. The claimed subject matter assumes that image processing is executed according to the image processing control information, and provides a solution to the problem that arises when the image processing control information is not available.

In the *Nitta* reference, the order in which it is determined whether the automatic selection mode or the manual selection mode is selected is different from that in the claimed

subject matter. According to the Examiner's characterization, *Nitta's* manual selection mode and automatic selection mode correspond to image processing with the image processing control information and image processing with the shooting condition, respectively. In the *Nitta* reference, it is first determined whether or not the automatic selection mode is selected. On the other hand, the configuration specified in the claimed subject matter first determines whether or not image processing in the manual selection mode, e.g., as disclosed by *Nitta*, is possible or the image processing control information for specifying an image processing condition as desired by the user is available. If not, the claimed configuration obtains the shooting condition to carry out image processing.

The above-mentioned features of the claimed subject matter are primarily attributed to the fact that image processing is first attempted with the image processing control information. This is not the case in the *Nitta* reference; however, it could be argued that it would be the case if the automatic selection mode and the manual selection mode were to be switched. In response to such an argument, Applicant notes that there is no disclosure (or suggestion) in the *Nitta* reference regarding putting the manual selection mode before the automatic selection mode.

As a further indicator of the differences between *Nitta's* configuration and the features of the claimed subject matter, Applicant notes that *Nitta's* configuration requires the user to manually set a mode for a printer. In contrast, the features of the claimed subject matter make it such that a user is not required to make settings for a printer. As such, in view of the foregoing discussion, the *Nitta* reference does not place the public in possession of the claimed subject matter (and would not have guided one having ordinary skill in the art to the claimed subject matter).

To further clarify the features of the claimed subject matter, Applicant has amended each of independent claims 10, 14, and 15 to specify that the shooting information and the

image processing control information are related to image data by an image data generating apparatus that is a separate body independent from the image processing apparatus.

For at least the foregoing reasons, the *Nitta* reference does not disclose each and every feature of the subject matter defined in amended claims 10, 14, and 15.

Accordingly, claims 10, 14, and 15, as amended herein, are patentable under 35 U.S.C. § 102(b) over *Nitta*. Claims 11-13, each of which depends from claim 10, are likewise patentable under 35 U.S.C. § 102(b) over *Nitta* for at least the same reasons set forth above regarding claim 10.

#### Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of claims 10-15, as amended herein, and submits that these claims are in condition for allowance. Accordingly, a notice of allowance is respectfully requested. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at **(408) 749-6902**. If any fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees to Deposit Account No. 50-0805 (Order No. MIPFP046).

Respectfully submitted,  
MARTINE PENILLA & GENCARELLA, L.L.P.

/Peter B. Martine/

Peter B. Martine  
Reg. No. 32,043

710 Lakeway Drive, Suite 200  
Sunnyvale, California 94085  
**Customer Number 25920**